

RECEIVED

BEFORE THE

APR 12 1995

**Federal Communications Commission** FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of )

Billed Party Preference )  
for 0+ InterLATA calls )

CC Docket No. 92-77  
DA 95-473

**COMMENTS OF CAPITAL NETWORK SYSTEM, INC. OPPOSING  
PROPOSED RATE CEILING ON OPERATOR SERVICE CALLS**

Capital Network System, Inc. ("CNS"), by its undersigned attorneys, hereby submits its comments opposing the ex parte submission proposing a rate ceiling on interstate operator service calls.<sup>1/</sup> CNS is an interexchange carrier ("IXC") headquartered in Austin, Texas. Founded in 1988, CNS's primary business is the provision of operator-assisted calling services.

On March 7, 1995, the Competitive Telecommunications Association and other parties ("the petitioners") filed an ex parte communication in the above-captioned rulemaking proceeding proposing a rate ceiling on "0+" operator service calls -- calls made by entering "0" plus the number to be called without the use of an access code, such as an 800 or 950 number or a 10XXX equal access code. The petitioners propose Commission adoption of this rate ceiling on operator service calls as an alternative to implementation of billed party preference ("BPP"), a Commission proposal by which all "0+" calls would be routed to the operator

---

<sup>1/</sup> The Commission solicited comments on the rate ceiling proposal in a public notice issued March 13, 1995, DA 95-473.

service provider ("OSP") preselected by the party paying for the call rather than to the OSP chosen by the owner of the telephone from which the call is placed. The petitioners argue that the record compiled by the Commission over a nine year period makes clear that any benefits of BPP are far outweighed by its costs and that the adoption of BPP is not in the public interest.

CNS agrees with the petitioners' statements that BPP is a hugely expensive solution to a small and diminishing problem and that BPP would create mass consumer confusion by requiring consumers to switch to a new system of dialing and presubscription just as the unblocking of access codes and the vast sums spent on consumer education have eliminated most of the problems commonly associated with the operator services industry. CNS disagrees with the petitioners, however, to the extent that they argue that an alternative should be adopted in place of BPP and that the alternative should be an OSP rate ceiling.

As discussed more fully in the September 14, 1994, Reply Comments of Capital Network System, Inc. in CC Docket No. 92-77, the imposition of a rate ceiling or the use of "benchmark" rate regulation in connection with the operator services industry would be unwise as a matter of policy and inconsistent with the Communications Act and relevant case law. First, as the Commission found in its 1989 TRAC decision,<sup>2/</sup> OSPs are nondominant carriers and, therefore, by definition lack

---

<sup>2/</sup> Telecommunications Research and Action Center and Consumer Action, 4 FCC Rcd 2157, 2158 (1989) ("TRAC").

sufficient market power to charge unjust and unreasonable rates within the meaning of the Communications Act of 1934, as amended ("the Act"). The Commission never has changed its 1989 determination that OSPs are nondominant carriers; and, without soliciting further comment, the Commission cannot change the regulatory classification of OSPs based upon the record in this proceeding. Under these circumstances, it would defy logic and be inconsistent with the Commission's prior reasoning for the Commission to impose a rate ceiling upon nondominant OSPs.

It is clear that OSPs possess even less market power today than at the time of the 1989 TRAC decision. Since that time Congress has enacted the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), and OSP consumer protection regulations have been implemented by the Commission. Moreover, as the petitioners note, millions of dollars successfully have been spent on OSP consumer education and extensive advertising campaigns for easily remembered dial-around methods like 1-800-COLLECT and 1-800-CALLATT. As a result, consumers today easily may dial-around OSPs they do not wish to use.

An OSP rate ceiling also would be extremely unwise as a matter of policy because of the burdens it would impose upon the Commission and its staff to engage in individualized rate-making proceedings for hundreds of OSPs. As explained in CNS's September 14, 1994, Reply Comments at 23-29, the Commission at a minimum would be required to examine the individual cost

structure of each OSP before it sets a rate ceiling. The petitioners' proposal to set the ceiling based on a sampling of complaints to the FCC about OSP charges would not meet the statutory standard under Section 205 of the Act, 47 U.S.C. § 205, for prescribing carrier rates. The courts have held that in any consideration of whether the rates of a carrier are just and reasonable under Title II of the Communications Act, "costs are generally the principal points of reference."<sup>3/</sup> The sampling by the petitioners of complaints filed with the FCC, however, provides no evidence of the OSP carrier's underlying costs and, thus, is irrelevant to the establishment of a rate ceiling. The Commission may not rely upon anecdotal claims of claimed overcharges and the vagaries of the petitioners' sampling of the FCC's complaint files to establish a rate ceiling to which all OSPs must conform.

In conclusion, CNS agrees with the petitioners that the costs of BPP far outweigh the claimed benefits and urges the Commission to terminate the BPP rulemaking proceeding. If the Commission also is interested in reducing the rates charged by nondominant OSPs, instead of adopting an arbitrary rate ceiling the Commission should focus on eliminating certain business practices of AT&T and of the dominant local exchange carriers ("LECs") that are described in detail in CNS's comments in this proceeding and which increase the operating costs of regional

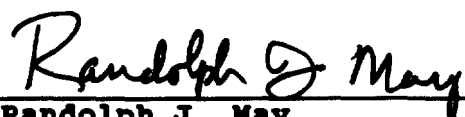
---

<sup>3/</sup> Ohio Bell Tel. Co. v. F.C.C., 949 F.2d 864, 867 (6th Cir. 1991); see also MCI Telecommunications Corp. v. F.C.C., 675 F.2d 408, 410 (D.C. Cir. 1982).

OSPs such as CNS.<sup>4/</sup> These practices described in our earlier comments include the unavailability of billing and collection agreements from some LECs and discriminatory charges for billing and collection services even from those LECs that do provide such services, and also the Commission's refusal to require AT&T to validate its CIID cards.<sup>5/</sup>

The public interest will be ill-served by substituting one bad policy (a rate ceiling on OSP charges) for another (BPP).

Respectfully submitted,  
Capital Network System, Inc.



Randolph J. May  
Timothy J. Cooney  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404  
(202) 383-0100

Its attorneys

April 12, 1995

---

<sup>4/</sup> See Comments of Capital Network Systems, Inc., CC Docket No. 92-77, August 1, 1994, at 26-36.

<sup>5/</sup> CNS notes that the signatories to the COMPTEL ex parte proposal represent companies that typically provide substantial amounts of direct-dial service in relation to operator services and that, therefore, these parties are not in the same position as regional carriers such as CNS who provide primarily operator services. These companies, with their large positions in the direct dial services market, do not have cost structures that necessarily track those carriers that provide primarily operator services.

**CERTIFICATE OF SERVICE**

I, Marcia Towne Devens, do hereby certify that true and correct copies of the foregoing document, "Comments of Capital Network System, Inc. Opposing Proposed Rate Ceiling On Operator Service Calls," were served by hand this 12th day of April, 1995, on the following:

Hon. Reed E. Hundt  
Chairman  
Federal Communications  
Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Hon. Susan Ness  
Commissioner  
Federal Communications  
Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Hon. Andrew C. Barrett  
Commissioner  
Federal Communications  
Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Ms. Kathleen M.H. Wallman  
Chief, Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Hon. Rachelle B. Chong  
Commissioner  
Federal Communications  
Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Mr. Gary Phillips  
Policy and Program Planning  
Division  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N.W., Room 544  
Washington, D.C.

James D. Schlichting  
Chief, Policy & Program  
Planning Division  
Federal Communications  
Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

International Transcription  
Service, Inc.  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037

Hon. James H. Quello  
Commissioner  
Federal Communications  
Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

  
Marcia Towne Devens